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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANNA S., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ANGELINA S.,

Defendant and Appellant.

D056056

(Super. Ct. No. SJ10893D)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M.
Bubis, Judge. Affirmed.

Angelina S. appeals a judgment terminating her parental rights to her minor
daughter Anna S. under Welfare and Institutions Code¹ section 366.26. Angelina argues
the court lacked sufficient evidence to support its findings that the beneficial parent-child

¹ Statutory references are to the Welfare and Institutions Code.

relationship exception of section 366.26, subdivision (c)(1)(B)(i) and the sibling relationship exception of section 366.26, subdivision (c)(1)(B)(v) do not apply to preclude terminating her parental rights. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Anna was born in November 2004. In November 2005 the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions on behalf of Anna and her three half brothers, Michael, Joshua and Daniel.² The petition alleged Angelina had been hospitalized after she threatened to kill herself and Anna. The court held a detention hearing in November 2005 and ordered Anna placed in out-of-home care. The court further ordered that Angelina participate in services.

The Agency submitted a jurisdiction and disposition report detailing Angelina's history with child protective services. The child welfare referrals indicated that domestic violence was taking place in the family home. Angelina and Tobias S., Anna's presumed father, had been through the dependency system once before following allegations of domestic violence. Tobias had hit Angelina and given her a black eye. The boys were removed from their parents' care. After receiving 24 months of services, Tobias and Angelina reunified with their sons.

The social worker interviewed Angelina concerning the current dependency. Angelina admitted she wanted to kill herself and Anna. She also admitted she is afraid of Tobias but she does not want to leave him. The social worker observed that Angelina did

² Anna's three half siblings are not subject to this appeal.

not have the judgment or insight to protect her children and was placing them at risk. The social worker recommended services for Angelina.

During the next 12 months Angelina regularly visited Anna, and the visits went well. Angelina participated in services that included counseling sessions, parenting classes and domestic violence treatment. She wanted to continue her relationship with Tobias and thus, the social worker referred them to conjoint therapy. However, the therapist noted that Tobias could not control his anger and that both parents required further conjoint therapy. During their conjoint sessions the therapist observed that the parents continued to blame their problems on the system. The therapist recommended additional therapy for both parents. At the end of 12 months of services, the social worker recommended that Anna be placed with her parents on a 60-day trial visit along with family maintenance services.

In an 18-month review report, the social worker recommended that Anna remain in Angelina's care. Anna had been living with Angelina and Tobias for about two months. The social worker noted Tobias continued to remain controlling over Angelina. In response to Tobias's behavior, the social worker referred the parents to a religious counselor but they did not participate in further treatment. At an 18-month review hearing, the court placed Anna with her parents.

One month later, the Agency filed a section 387 petition seeking removal of Anna from Angelina. Tobias had thrown a broom at Anna's older siblings. Angelina failed to protect the children from the violence and she continued to live with Tobias. Angelina admitted that Tobias physically abused the boys and that Anna cried when Tobias yelled

in the home. The court granted the section 387 petition, terminated services to Angelina and ordered Anna placed in out-of-home care. The court scheduled a section 366.26 hearing.

According to an initial section 366.26 report, Angelina continued to blame the Agency for forcing her to leave Tobias. The social worker believed that the violence between Angelina and Tobias was likely to continue based on their history together. Anna remained in out-of-home care and Angelina participated in visits with Anna. Anna did not show signs of distress at the end of the visits. The social worker opined that although Anna and Angelina shared a connection, the benefits of maintaining the parent-child relationship did not outweigh the benefits Anna would receive from a stable adoptive placement.

The social worker recommended that Anna be adopted. Anna was three years old and the Agency had identified several families interested in a child like Anna. Anna's older brothers did not want to be adopted. The social worker believed that placing Anna with her brothers would not be helpful to Anna because the siblings' behavioral problems would likely interfere with finding a stable home for her.

In March 2008 Angelina filed a section 388 petition before the section 366.26 hearing took place. She requested that the court place Anna in her care. The Agency opposed the request, noting that Anna had been placed in an adoptive home and was doing well. Anna had been out of Angelina's care for more than half of Anna's lifetime and the Agency did not believe Angelina was in a position to properly care for Anna.

Anna's siblings also filed a section 388 petition stating they did not want Anna to be placed for adoption.

In an addendum report, the social worker reported that Anna continued to participate in visits with Angelina. Anna enjoyed the visits but did not have difficulty separating from Angelina at the end of visits. Concerning Anna's relationship with her siblings, the social worker reported that Anna's prospective adoptive parents were willing to allow Anna to have contact with her older brothers. The social workers argued that even if Anna stopped having visits with her siblings, the benefits of adoption outweighed the benefits of maintaining a sibling relationship because Anna needed permanency and stability.

In September 2008 the court granted Angelina's section 388 petition and placed Anna in her care along with family maintenance services. Counsel for Anna filed a notice of appeal. The social worker requested a special hearing to address Anna's placement with Angelina. Angelina was living at a shelter that could not accommodate Anna.

In January 2009 minor's counsel filed a section 388 seeking to remove Anna from Angelina's care. Angelina had been living in a shelter with Anna in San Diego. Angelina, Anna and an unknown male whom Angelina met at the shelter traveled to Tennessee. Angelina did not have permission to take Anna outside of California. Angelina and Anna ended up in North Carolina with no money, food or shelter. Angelina went to a child protective services office in North Carolina for help. Minor's counsel

believed Angelina's actions placed Anna at risk. Angelina had received many months of services and the services had not benefitted her.

In March 2009 this court reversed the trial court's September 2009 order that placed Anna in Angelina's care. The trial court found the section 388 petition filed by minor's counsel to be moot in light of this court's March 2009 decision. The trial court ordered that the Agency submit an assessment report and scheduled the matter for a section 366.26 hearing.

The social worker filed a second section 366.26 report. Anna disclosed to the social worker that she had been sexually abused, but she was not able to identify her perpetrator. The abuse likely took place when Angelina left Anna in the care of a male adult. Anna expressed anger toward Angelina for exposing her to the "bad man" who molested her. Anna participated in therapy to address the abuse she suffered while in Angelina's care.

After Anna disclosed the abuse, Angelina was not in favor of allowing Anna to address the molestation in therapy and she was not entirely convinced that the abuse occurred. The social worker noted Angelina had made very few changes in her life, even though she had received many years of services. During the course of the proceedings, Angelina returned to an abusive spouse, subjected Anna and her siblings to physical and emotional abuse, and left Anna in the care of an individual who sexually abused Anna. The relationship between Angelina and Anna was not so significant that it would outweigh Anna's need for physical safety and stability.

Anna had been placed in an approved adoptive home—in the same home where she had been before her latest placement with Angelina. The caregivers remained committed to adopting Anna and supported her having contact with her siblings. Anna readjusted well to her home environment and had bonded to her caregivers.

Anna and Angelina participated in a bonding study at the request of Angelina. Dr. Robert Kelin conducted the study and concluded Anna had a "slight bond" with Angelina. Anna appeared happy to see Angelina and their interactions together were appropriate. Anna referred to Angelina as "mama" or "Mommy Angel." When Angelina left the room Anna asked where Angelina was going, but she did not show much emotion or reaction from being separated from Angelina. When Angelina left the session Anna looked a little sad for a few seconds, but she quickly recovered and went back to playing with her toys. Dr. Kelin observed that Anna's interactions with him were similar to the way she interacted with Angelina. Dr. Kelin opined Anna might only be slightly hurt if she were to lose contact with Angelina.

The court held a section 366.26 hearing in September 2009. Social worker Lerone Jenkins testified that he had the opportunity to observe at least six visits between Angelina and Anna. Angelina regularly visited Anna and her interactions with Anna were appropriate. Anna seemed to enjoy the visits with Angelina, but she separated easily from her. Jenkins did not believe the relationship between Anna and Angelina was a significant one. Anna lived with Angelina for the first year of her life, then was removed from Angelina's care and custody. Anna also lived with Angelina again for two additional periods of time that were relatively short in duration. Anna was removed from

Angelina's care in both instances. Jenkins noted the relationship between Angelina and Anna was akin to that between a family member and a child instead of a parent and a child. Jenkins spoke with Anna about being adopted. When he asked her where she wanted to live, Anna replied she wanted to live with her caregivers, "mommy Jamie and daddy," and "mommy." Jenkins did not believe terminating the parental relationship would be detrimental to Anna given Angelina's history.

Jenkins noted that Anna shared a relationship with her siblings, but he did not believe the relationship was so significant that terminating parental rights would be detrimental to Anna because Anna needed permanency and stability in her life. Anna's prospective adoptive parents were willing to maintain contact with Anna's siblings.

After considering evidence and hearing arguments, the court found Anna was likely to be adopted and none of the exceptions of section 366.26, subdivision (c)(1)(B) applied to preclude terminating parental rights. The court terminated parental rights and referred Anna for adoptive placement.

DISCUSSION

I

Angelina challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating her parental rights. She asserts she regularly visited Anna and shared a strong parental bond with her.

A

We review the judgment for substantial evidence. (*Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)). If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of six specified exceptions. (§ 366.26, subd. (c)(1)(B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the

well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although day-to-day contact is not required, it is typical in a parent-child relationship. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) The parent must show he or she occupies a parental role in the child's life, resulting in a positive and emotional attachment from child to parent. (*Autumn H.*, *supra*, at p. 575; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

The court found Angelina regularly visited Anna. Thus, we examine only whether substantial evidence supports the court's finding that Angelina did not have a beneficial

relationship with Anna. Admittedly, the evidence shows Anna and Angelina shared a relationship, but it was not shown to be a beneficial parent-child relationship within the meaning of section 366.26, subdivision (c)(1)(B). Dr. Kelin conducted a bonding study between Anna and Angelina and observed that Anna was happy to see Angelina and their interactions with one another were appropriate. However, he noted that his interactions with Anna were not much different from her interactions with Angelina. Dr. Kelin observed that Anna showed little reaction when Angelina left the room during the study. When Angelina left the room for the final time, Anna looked sad for a very brief moment, then went back to playing. Dr. Kelin opined that Anna shared a "mild bond" with Angelina and might be "slightly hurt" if she were to lose contact with her. Dr. Kelin did not state that Anna would benefit more from maintaining a relationship with Angelina than she would by being adopted.

There was no evidence that Anna had a substantial, positive emotional attachment to Angelina to permit the conclusion that termination of parental rights would result in great detriment to Anna. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; compare *In re S.B.* (2008) 164 Cal.App.4th 289, 294-295, 298-300 [minor would be greatly harmed by loss of significant, positive relationship she had with father, who complied with every aspect of his case plan].) Social worker Jenkins acknowledged Anna and Angelina had a relationship but that it was not a significant one. Jenkins observed several visits between Anna and Angelina before the section 366.26 hearing took place. The visits were appropriate. Anna did not show undue emotion after being separated from Angelina and did not appear sad when Angelina was not around. Anna instead looked to her

prospective adoptive parents to meet her day-to-day needs. Jenkins believed any benefit Anna derived from her relationship with Angelina was outweighed by the stability and security she would gain from being adopted. Even if Anna grieves and feels a sense of loss if she no longer had contact with Angelina, there was no showing Anna would be greatly harmed. To require a parent show only "some, rather than great, harm at this stage of the proceedings would defeat the purpose of dependency law." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude terminating parental rights.

II

Angelina contends the sibling relationship exception set forth in section 366.26, subdivision (c)(1)(B)(v) applied to compel a permanent plan other than adoption. She asserts Anna's half brothers share a close and significant relationship with Anna and that ongoing contact with her half brothers was in Anna's best interests.

A

Section 366.26, subdivision (c)(1)(B)(v) provides an exception to terminating parental rights when the juvenile court finds there is a compelling reason for determining that termination would be detrimental to the child due to substantial interference with a child's sibling relationship. Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home and whether the child has strong bonds with a sibling. The court must also consider whether ongoing contact is in the child's best interests, including the child's long-term emotional interest,

as compared to the benefit of legal permanence through adoption. (*Ibid*; see also *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) The purpose of this exception is to preserve long-standing sibling relationships that serve as "anchors for dependent children whose lives are in turmoil." (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 404.)

The sibling relationship exception contains "strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) The exception focuses exclusively on the benefits and burdens to the child being considered for adoption, not the other siblings. (*Ibid.*) Similar to the beneficial parent-child relationship exception, application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.) However, the parents have the burden to show: (1) the existence of a significant sibling relationship; (2) termination of parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at pp. 951-952.) Once the parent establishes that a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefit of adoption. (*Id.* at pp. 952-953.)

B

We consider first whether Anna has a significant relationship with her half brothers sufficient to trigger the application of the section 366.26, subdivision (c)(1)(B)(v) exception. The Agency agrees that Anna and her older half brothers share a relationship. Anna lived with her older brothers until she was about one year old. She

then went to live in a different foster home and saw her siblings on a regular basis. Their ongoing contact and shared experience of living together establishes that the siblings share a relationship.

However, even assuming the siblings share a "significant relationship" with Anna, there was no showing that terminating parental rights would substantially interfere with the maintenance of further development of the sibling relationship or that it would be detrimental to Anna to sever her relationship with her siblings. We acknowledge that Anna's siblings stated they did not want Anna to be placed for adoption. However, the focus at the section 366.26 hearing is on the child being considered for adoption, not on the child's siblings. (See *In re Celine R.* (2003) 31 Cal.4th 45.) Here, Anna's prospective adoptive parents told the social worker they plan to allow Anna to maintain a relationship with her siblings once the adoption is finalized. The record shows when visits with her siblings ended, there was little showing Anna suffered emotional distress. Anna asked very little, if at all, about her siblings in between visits. When asked where she wanted to live, Anna replied that she wanted to live with her prospective adoptive parents or Angelina. She did not mention her siblings.

The record shows the benefit of preserving the sibling relationship would not outweigh the benefit to Anna of being adopted by loving and nurturing caregivers. Anna has different needs than her siblings. She became a dependent at age one and was about four years old when the court held the section 366.26 hearing. She currently is placed in a stable, prospective adoptive home. Her siblings, however, are significantly older and do not want to be adopted. Anna has been a dependent for most of her life and, unlike

her siblings, she has a chance at permanency. Thus, " 'the court should order adoption.' [Citation.]" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) Substantial evidence supports the court's finding that the exception of section 366.26, subdivision (c)(1)(B)(v) does not apply to preclude terminating Angelina's parental rights.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.